UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS

IN RE:	)	
	)	
DIANE R. HAWLEY,	)	**No. 02-83674**
	)	
Debtor.	)	
	)	
	)	
RICHARD E. BARBER, not personally, but as Chapter 7 Trustee for Diane R. Hawley,	)	
Plaintiff,	)	
	)	
vs.	)	**Adv. No. 03-8040**
	)	
CYNTHIA J. SIMPSON, not personally, but as Successor Trustee of the G. Raymond Becker Irrevocable Trust dated August 11, 1976,	)	
Defendant.	)	

O P I N I O N

This matter is before the Court on cross motions for summary judgment filed by the Plaintiff, Richard E. Barber, as Chapter 7 Trustee ("CHAPTER 7 TRUSTEE") for Diane R. Hawley, and by the Defendant, Cynthia J. Simpson ("SIMPSON"), as Successor Trustee of the G. Raymond Becker Irrevocable Trust. At issue is whether the interest of the Debtor, Diane R. Hawley ("DEBTOR"), in the spendthrift trust created by her father, G. Raymond Becker, is property of her bankruptcy estate.

FACTS

On August 11, 1976, G. Raymond Becker executed a Declaration of Trust that created an irrevocable spendthrift trust ("TRUST") for the benefit of his eight children. Article II of the Declaration of Trust required that the trust property be divided into eight separate

trusts of equal value for each child. There is no evidence that such a division ever occurred. Rather, as authorized by Paragraph 2(1) of Article IV, the several trusts were held as a common fund, with the net income divided proportionately among the beneficiaries.

Co-trustees were installed when the TRUST was created. The initial co-trustees were Commercial National Bank of Peoria and Ronald Becker, one of the beneficiaries. The Declaration of Trust provides for the replacement of the corporate trustee, if such trustee resigns or refuses to act, with another corporate trustee, to be appointed by the Grantor, G. Raymond Becker.[1] If Ronald Becker died, resigned, or refused or became unable to act, Cynthia Holmes was named as successor trustee.

At some point subsequent to the TRUST'S creation, the corporate co-trustee resigned and was not replaced by another corporation.[2] The circumstances of that resignation are not part of the record. Also subsequent to the TRUST'S creation, under circumstances not disclosed in the record, Ronald Becker's status as co-trustee terminated and he was replaced by SIMPSON, f/k/a Cynthia Holmes, another one of the beneficiaries.

The income from the TRUST was to be paid to the beneficiaries at least annually for the twenty-one-year term of the TRUST, at which time the corpus was to be distributed.

---

[1] Upon his death, a successor corporate trustee could be appointed by a majority of the income beneficiaries.

[2] The Declaration of Trust is less than a model of clarity, drafted with a "cut and paste" approach, readily apparent from its face. Portions of the document are incompatible. For instance, Paragraph 1(b) of Article V provides that upon resignation of a corporate trustee, another corporation "may" be appointed, signaling that the replacement of a corporate trustee is not mandatory. However, the paragraph immediately following provides that the corporate trustee "shall" be the custodian of both the property and the records, and makes no exception or accommodation for the lack of a corporate trustee. Lending further support to the interpretation that the Grantor intended for the continued existence of a corporate trustee and of particular note here is Paragraph 1(e), which guards against an individual trustee acting in his own self-interest, and provides:

> No trustee shall participate in the exercise of any discretion with respect to the distribution of income or principal or any portion of the trust property in which he, or any person he is obligated to support, has any beneficial interest, and the discretion shall be exercised only by the remaining trustee.

Specifically, the Declaration of Trust, at Paragraph 2(b) of Article II, provides:

> This trust shall terminate twenty-one (21) years after the date of its creation. Upon termination, the trust corpus and undistributed income, if any, shall be distributed to the then beneficiaries in equal shares. Distribution may be in cash or in kind. Equal ownership interests in any real estate then owned by the trust may be distributed to the beneficiaries as tenants in common. The beneficial interests in any land trust which may then be held by this trust may be distributed or assigned to the beneficiaries in equal shares.

The TRUST was irrevocable, providing in Article VI that the Grantor, G. Raymond Becker, "shall have no power to amend or revoke this agreement." The Declaration of Trust also contains two other material provisions. Paragraph 4 of Article III states the spendthrift provision, as follows:

> No interest under this instrument shall be transferable or assignable by any beneficiary or his descendant, or be subject during his life to claims of his creditors. Neither shall any interest created hereunder be used to satisfy any claim for alimony or separate maintenance against a beneficiary or his descendant.

Paragraph 6 of Article III states the Rule Against Perpetuities savings clause, as follows:

> Notwithstanding anything to the contrary, the trusts under this instrument shall terminate not later than twenty-one (21) years after the death of the last survivor of the Grantor's descendants living on the date of this trust agreement, at the end of which period the trustees shall distribute each remaining portion of the trust property to the beneficiary or beneficiaries, at that time, of current income, and, if there is more than one beneficiary, in the proportions in which they are beneficiaries.

Shortly before the TRUST was to terminate on August 11, 1997, SIMPSON, acting as sole trustee as well as a beneficiary, and the other beneficiaries entered into an agreement to extend the termination date of the TRUST to August 10, 2002. On July 8, 2002, a similar

agreement was executed by the same parties extending the TRUST until August 11, 2003. These extension agreements were not signed by the Grantor, G. Raymond Becker, even though he survives. Neither were they signed by any corporate or other trustee who was not also a beneficiary.[3]

On August 15, 2002, the DEBTOR filed a Chapter 7 petition in bankruptcy. The DEBTOR listed her interest in the "spendthrift" family TRUST as having no value. The CHAPTER 7 TRUSTEE brought this adversary proceeding, seeking to avoid the second agreement extending the TRUST as a fraudulent conveyance and to recover the DEBTOR'S interest in the TRUST as property of the bankruptcy estate.

SIMPSON filed a Motion for Summary Judgment, contending that the DEBTOR'S interest in the TRUST is excluded from the bankruptcy estate under Section 541(c)(2) of the Bankruptcy Code as a spendthrift trust. SIMPSON relies on Paragraph 6 of Article III of the Agreement, contending that it supercedes Paragraph 2(b) of Article II and authorizes the TRUST to continue beyond the stated twenty-one-year term. Alternatively, SIMPSON contends that the extension agreements continued the TRUST uninterrupted and unaltered, including its spendthrift provision.

The CHAPTER 7 TRUSTEE also moved for summary judgment, contending that the second extension agreement, executed within a year of the bankruptcy, when the DEBTOR was insolvent, is avoidable as a fraudulent transfer under Section 548 of the Bankruptcy

[3] The extension agreements are signed by only six of the original eight beneficiaries. Both agreements recite that "Robert Becker is deceased and Ronald Becker has relinquished any interest that he had in the Trust." The agreements also recite that the original co-trustees have resigned and that SIMPSON, one of the remaining beneficiaries, has become the sole trustee of the TRUST. SIMPSON signed both extension agreements without designation of any representative capacity.

Code. Claiming that the DEBTOR was entitled to a distribution from the TRUST in 1997, the CHAPTER 7 TRUSTEE contends that the effect of the extensions was to make the DEBTOR the settlor of her own trust, resulting in a loss of the benefit of the "spendthrift" exclusion.

ANALYSIS

The general rule under the Bankruptcy Code is that an interest of the debtor in property becomes property of the estate notwithstanding a provision that restricts or conditions transfer of such interest by the debtor. 11 U.S.C. § 541(c)(1). An exception is provided to that general rule, however, in that:

> A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. § 541(c)(2). This exception entitles a debtor to exclude from property of the estate a beneficial interest of the debtor in a trust that is subject to a spendthrift clause to the extent enforceable against creditors under applicable law. *In re Brown,* 303 F.3d 1261 (11th Cir. 2002); *Matter of Baker,* 114 F.3d 636 (7th Cir. 1997). However, the exclusionary exception is to be strictly construed so as to avoid impinging on the policies sought to be furthered by the Bankruptcy Code. *In re McCullough,* 259 B.R. 509 (Bankr.D.R.I 2001). State law determines whether the debtor's access to the funds is sufficiently restricted to qualify for exclusion from the bankruptcy estate. *Morter v. Farm Credit Services,* 937 F.2d 354 (7th Cir. 1991), *cert. den'd,* 505 U.S. 1204, 112 S.Ct. 2991, 120 L.Ed.2d 868 (1992).

It is not infrequent that a spendthrift provision is determined unenforceable, rendering the debtor's interest in a purported spendthrift trust to be property of his

bankruptcy estate. For example, where the debtor is both the settlor and a beneficiary of the trust, so that the restriction against transfer is unenforceable under state law, the debtor's beneficial interest is property of his bankruptcy estate. *In re Simmonds,* 240 B.R. 897 (8th Cir.BAP 1999). Where the terms of the trust allowed a debtor to make payments to himself from the corpus to any extent that he determined "desirable," the spendthrift provision was unenforceable under Illinois law and the trust property was included in his bankruptcy estate. *In re McCoy,* 274 B.R. 751 (Bankr.N.D.Ill. 2002), *aff'd,* 2002 WL 1611588 (N.D.Ill. July 22, 2002). The key inquiry is whether the debtor has any ability to obtain access to the trust funds or to control the timing or manner of distribution. *In re Comp,* 134 B.R. 544, 551 (Bankr.M.D.Pa. 1991). Once access is triggered, the interest in the trust can no longer be properly excluded under Section 541(c)(2) because of the debtor's present right to payment. *Id.* The actual exercise of control by the debtor is not necessary. It is the debtor's right to exert control that is dispositive. *McCullough,* 259 B.R. at 518.

Under Illinois law, a spendthrift trust cannot be self-settled. *In re Marriage of Chapman*, 297 Ill.App.3d 611, 697 N.E.2d 365 (Ill.App. 1 Dist. 1998). That is, the settlor cannot also be the beneficiary. In *Matter of Perkins*, 902 F.2d 1254 (7th Cir. 1990), the Seventh Circuit Court of Appeals noted the following considerations in determining whether a trust under Illinois law qualifies as a spendthrift trust:

> (1) whether the trust restricts the beneficiary's ability to alienate and the beneficiary's creditors' ability to attach the trust corpus; (2) whether the beneficiary settled and retained the right to revoke the trust, and (3) whether the beneficiary has exclusive and effective dominion and control over the trust corpus, distribution of the trust corpus and termination of the trust. *See, e.g., Christison v. Slane (In re Silldorff)*, 96 B.R. 859, 864 (C.D.Ill. 1989). The

> degree of control which a beneficiary exercises over the trust corpus is the principal consideration under Illinois law.

902 F.2d at 1257, n.2.

The CHAPTER 7 TRUSTEE concedes that the TRUST was a valid spendthrift trust at the time it was created and throughout its original twenty-one year term, on account of the spendthrift provision set forth in Paragraph 4 of Article III. The issue is whether the spendthrift provision retained its efficacy as of the date the DEBTOR filed her petition. In order to answer that question, it is necessary to ascertain the effect, under Illinois law, of the extension agreements executed by the beneficiaries.[4]

It is well settled that a trust will terminate at the expiration of the period of time fixed by the settlor for the trust's duration, absent a violation of the Rule Against Perpetuities. *La Salle Nat. Bank v. MacDonald*, 2 Ill.2d 581, 119 N.E.2d 266, 269 (1954); *Madden v. University Club of Evanston*, 97 Ill.App.3d 330, 422 N.E.2d 1172 (Ill.App. 1 Dist. 1981). The Declaration of Trust expressly provides for termination twenty-one years after creation. The TRUST is irrevocable and the Grantor reserved no power to modify or amend. Moreover, the Declaration of Trust gives neither the beneficiaries nor the trustees any power to extend the term of the TRUST or to otherwise amend or modify the TRUST. There is nothing in the Declaration of Trust that supports SIMPSON'S contention that the beneficiaries and the trustee(s) had the power to extend the term of the TRUST.

SIMPSON argues that even absent an express provision authorizing extension of the TRUST, the unanimous action of all of the remaining beneficiaries, including SIMPSON,

---

[4] The Declaration of Trust provides that it is to be construed under Illinois law.

who was then serving as sole remaining trustee, effected a valid extension of the term of the TRUST that preserved and extended the enforceability of the spendthrift provision as to the DEBTOR'S creditors. The CHAPTER 7 TRUSTEE disagrees, contending that her creditors could have invaded the TRUST, to the extent of the DEBTOR'S interest therein, at any time after August 11, 1997, notwithstanding the extension agreements.

As a general rule, beneficiaries of a trust cannot revise the provisions of the instrument creating the trust to suit their own desires. *Altemeier v. Harris,* 335 Ill.App. 130, 139, 81 N.E.2d 22, 27 (Ill.App. 2 Dist. 1948), *aff'd,* 403 Ill. 345, 86 N.E.2d 229 (1949). As a matter of policy, Illinois courts are careful not to permit an extension of control of trust property by the trustees beyond the term of the trust. *Friedberg v. Schultz,* 312 Ill.App. 171, 38 N.E.2d 182, 184 (Ill.App. 1 Dist. 1941). In fact, it has been held that a provision authorizing the trustees to alter, amend or modify the trust agreement should not be construed to authorize an extension of the term of the trust, absent a specific provision to that effect. *Olson v. Rossetter,* 399 Ill. 232, 242, 77 N.E.2d 652, 657 (1948). *Accord*, *Sexton v. U.S.,* 300 F.2d 490, 492 (7th Cir. 1962).

SIMPSON has presented no case law in support of her position that, under Illinois law, trust beneficiaries may act to extend the term of an irrevocable spendthrift trust, despite the absence of a trust provision granting them that authority. In light of the strong policy espoused by Illinois courts of literal enforcement of trust terms, generally, and termination dates, specifically, this Court is of the opinion that the beneficiaries here did not have the power to extend the term of the TRUST.[5]

[5] This is not a case where the Grantor joined in the extension agreements and the Court offers no opinion as to whether that would have changed the result. The sole remaining trustee, SIMPSON, did agree to the extensions, but the Declaration of Trust gave no such power to either the beneficiaries or the trustees.

SIMPSON argues that the Rule Against Perpetuities savings clause set forth in Paragraph 6 of Article III of the Declaration, can be construed to permit an implied right of extension that overrides the mandatory termination after twenty-one years, or that there is at least an ambiguity in this regard. Again, she cites no support for this theory.

Like contracts, trust documents are to be enforced according to their terms. Where the terms are unambiguous, a court will construe and enforce them according to their plain meaning and will not look beyond the four corners of the document for alternative meanings. *Northern Trust Co. v. Tarre,* 86 Ill.2d 441, 427 N.E.2d 1217 (1981); *2416 Corp. v. First Nat. Bank of Chicago,* 64 Ill.2d 364, 371, 356 N.E.2d 20 (1976). The construction of an unambiguous trust instrument, and the determination of whether it is ambiguous, are purely questions of law. *Estate of Steward,* 134 Ill.App.3d 412,480 N.E.2d 201 (Ill.App. 2 Dist. 1985).

It is clear to this Court that Paragraph 6 of Article III is a form of the standard provision inserted by cautious drafters as a hedge against any possible violation of the Rule Against Perpetuities. *See* Robert S. Hunter, 3 Estate Planning and Administration in Illinois § 195.1 (3rd ed. 1998). There is simply no basis for interpreting the provision as anything other than that. Moreover, the savings clause does not contradict the twenty-one year stated term. It merely provides an alternative terminal point "[n]otwithstanding anything to the contrary." The express twenty-one year term of the TRUST is well within the outside limit established by the Rule Against Perpetuities and is in no way "contrary" thereto. Accordingly, this Court determines that the savings clause in Paragraph 6 of Article III is

not an implied right of extension and does not contradict or render ambiguous the provision calling for termination of the TRUST twenty-one years after its creation.

This Court agrees with the CHAPTER 7 TRUSTEE, that because the beneficiaries had the right to distribution of the corpus as of August 11, 1997, this unfettered right of control negated any future effect of the spendthrift clause. Since the rationale which prevents creditors from reaching the principal is that the beneficiary cannot reach it, it would "strain logic and the law" to continue to enforce a spendthrift clause after the beneficiary had access to the principal, even if unexercised. *McCoy,* 274 B.R. at 766. The effect of the first extension agreement was to create a new, self-settled trust by the remaining beneficiaries. The effect of the second extension was, likewise, to create a new, self-settled trust. Under Illinois law, the TRUST'S spendthrift provision, after August 11, 1997, was not effective to shelter the TRUST assets from a beneficiary's creditors.[6]

SIMPSON argues that the DEBTOR had no "duty" or "obligation" to request distribution of her share of the TRUST, either in 1997, when the original twenty-one year term expired, or in 2002, when the first extension expired. The proper inquiry, however, is not whether she had a duty or obligation to request distribution, but whether she had a present *right* to the distribution. Undeniably, she did, and it is that right that eviscerates the TRUST'S spendthrift protection.

The final argument raised by SIMPSON is that the purpose of the TRUST would have been defeated had distribution been made as of August 11, 1997. Since the TRUST assets

[6] Moreover, apart from the question of the continued effectiveness of the spendthrift clause, the use of extension agreements among the beneficiaries when SIMPSON was the sole remaining trustee is of suspect validity. As set forth in footnote 2 herein, Paragraph 1(e) of the Declaration of Trust prohibits any trustee who is also a beneficiary from participating in the exercise of discretion with respect to the distribution of income or principal. Because the Declaration of Trust mandated distribution of the TRUST corpus at the end of twenty-one years, SIMPSON, then acting as sole trustee, would be prohibited from exercising discretion with respect to the postponement of distribution.

consisted primarily of real estate, SIMPSON says the purpose of the TRUST was to administer real estate and the TRUST was extended because of unfavorable market conditions for sale or, at least, that there is a question of fact as to the purpose of the TRUST.

Paragraph 3 of the first extension agreement provided:

> That all remaining beneficiaries of the Trust Indenture agree to extend the termination date of the Trust from August 11, 1997, to August 10, 2002, because of the many difficulties involved in separating each beneficial interest upon such an early termination.

The second extension agreement contains a similar provision as the stated reason for extending the TRUST from August 10, 2002 to August 11, 2003. Both extension agreements incorporated all of the terms and conditions of the Declaration of Trust.

As a narrow exception to the general rule that the duration of a trust fixed by a settlor will be given effect, there is a line of cases in Illinois that recognizes that a trust may be extended beyond its stated term where the settlor has manifested an intention that the trust should continue until accomplishment of a certain purpose, so that the provision that a trust is to terminate on expiration of a certain period is construed as being merely directory. *La Salle Nat. Bank v. MacDonald,* 2 Ill.2d 581, 587, 119 N.E.2d 266, 269 (1954); *Breen v. Breen,* 411 Ill. 206, 103 N.E.2d 625 (1952); *Madden v. University Club of Evanston,* 97 Ill.App.3d 330, 422 N.E.2d 1172, 52 Ill.Dec. 963 (Ill.App. 1 Dist. 1981).

The Declaration of Trust contains no statement of any such purpose or any indication that the TRUST should continue beyond its twenty-one year term under any circumstances.[7] Rather, the TRUST unconditionally provides that it terminates after twenty-one years.

[7] It is generally recognized, under Illinois law, that the underlying purpose of a spendthrift trust is to provide maintenance and support of another while protecting the beneficiary from squandering the principal or from her own incapacity. *McCoy,* 274 B.R. at 766.

Construing this provision as optional or "merely directory" would be to create a false rule of law that trusts are extendable at will, regardless of the settlor's stated intent. Illinois law is to the contrary.[8]

SIMPSON cites *Breen v. Breen, supra,* as supporting the proposition that a trust may be extended where the trust purpose has not been satisfied. *Breen,* however, did not involve a spendthrift trust that the beneficiaries were seeking to extend to the detriment of creditors, and does not stand for the sweeping proposition that SIMPSON claims. The *Breen* trust provided for a term of twenty years and directed the trustee to sell any remaining trust property at that time and distribute the proceeds. Rejecting the beneficiaries' contention that the trust's termination on the specified date operated to immediately vest title to the trust real estate in the beneficiaries, the court held that the trustee's power to sell the property did not cease upon the trust's twenty-year anniversary, but continued for a reasonable period of time so as to permit the trustee to wind up the trust in accordance with the settlor's intent. The court further held that upon expiration of the twenty-year term of the trust, it became imperative for the trustee to immediately sell the property, "lest a reasonable time shall have expired giving rise to adequate cause for his removal." 411 Ill. at 213.

In contrast to *Breen*, the TRUST did not require SIMPSON to sell the property but authorized her to convey title to the TRUST property directly to the beneficiaries. Para-

[8] In *La Salle Nat. Bank v. MacDonald,* beneficiaries argued that a trust that clearly provided for its termination after twenty years should be extended because liquidation of the corpus would result in large capital gains tax liability. The court rejected the argument, reasoning that "[i]f the tax on capital gains operates to bar the termination of trust property, a specific direction as to the duration of a trust would be of dubious value." 2 Ill.2d at 588. The same can be said of SIMPSON'S argument that unfavorable market conditions for sale of the TRUST real estate is cause to ignore its clear termination date.

graph 2(b) of Article II, provides, in material part, as follows:

> This trust shall terminate twenty-one (21) years after the date of its creation. Upon termination, the trust corpus and undistributed income, if any, shall be distributed to the then beneficiaries in equal shares. Distribution may be in cash or in kind. Equal ownership interests in any real estate then owned by the trust may be distributed to the beneficiaries as tenants in common. The beneficial interests in any land trust which may then be held by this trust may be distributed or assigned to the beneficiaries in equal shares.

It is a primary fiduciary obligation of a trustee to carry out a trust according to its terms. *Chicago Title & Trust Co. v. Chief Wash Co.*, 368 Ill. 146, 155, 13 N.E.2d 153, 157 (1938). SIMPSON, as sole remaining trustee, had the duty to distribute the TRUST corpus and undistributed income within a reasonable period after termination of the TRUST on August 11, 1997, and, rather than selling the real estate, she was authorized to convey title to the beneficiaries as tenants in common and to assign the beneficial interests in any land trust to the beneficiaries in equal shares. Contrary to SIMPSON'S assertion, the TRUST does not require that the real estate be sold in order to wind up the affairs of the TRUST. *Breen,* requiring a trustee to expeditiously wind up the trust upon its termination, supports the TRUSTEE'S position, not SIMPSON'S.

Moreover, this Court is aware of no authority to support the proposition that a spendthrift provision is effective during the period it takes to wind up a trust after it has terminated. Since a beneficiary's *right* to receive the trust property accrues upon termination, this Court is of the view that the spendthrift provision's sheltering effect ends when the trust terminates, even if the actual distribution of the trust assets occurs later. *See, In re Arney,* 35 B.R. 668 (Bankr.N.D.Ill. 1983)(spendthrift provision is effective, under Iowa law, only so long as trustee is under no present obligation to transfer trust funds to beneficiary or terminate the trust).

For these reasons, the exception provided by Section 541(c)(2) does not apply, and the DEBTOR'S interest in the TRUST became property of her bankruptcy estate when her petition was filed, and is subject to the CHAPTER 7 TRUSTEE'S right to administer that interest for the benefit of the DEBTOR'S creditors. Assuming its validity, the second extension agreement, in effect on the petition date, has now expired, and this Court need not address the CHAPTER 7 TRUSTEE'S contention that the DEBTOR'S execution of the agreement is a transfer avoidable under Section 548(a)(1)(B). Under this Court's ruling, the spendthrift provision became a nullity upon the expiration of the original term of the TRUST. The DEBTOR, along with the remaining beneficiaries, each became their own settlor, and the interests of the beneficiaries would not, thereafter, have been protected from the actions of his or her creditors.[9]

While the extensions of the TRUST were not effective as between the beneficiaries and their individual creditors, they were, presumably, valid, as new, self-settled trusts, as between each beneficiary and SIMPSON, as trustee. For purposes of this proceeding, it is significant that the DEBTOR'S beneficial interest in the TRUST corpus did not diminish during the period of the extensions.[10] In fact, the extensions may have served to preserve the TRUST assets. This Court fails to see how "avoiding" the second extension would be necessary to grant the CHAPTER 7 TRUSTEE the remedy he seeks. During the extended period of the TRUST, up until the filing of the bankruptcy petition, the DEBTOR'S share of

---

[9] Presumably, the beneficiaries, acting in concert, could have terminated the new trusts at any time during the period of the extensions. Regardless, however, because the Declaration of Trust, fully incorporated into the extension agreement, specifically provided for the creation of separate trusts for each beneficiary, the unanimous consent of all beneficiaries would not have been required for the DEBTOR to terminate her trust.

[10] Generally, to be avoidable, a transfer must result in a depletion or diminution of the debtor's estate. *Matter of Smith,* 966 F.2d 1527, 1535 (7th Cir. 1992).

distributive income would have been received by her. SIMPSON continues to hold the TRUST assets, under either the second extension agreement or the first, both of which are identical, and both of which have now expired. Accordingly, the DEBTOR has a present right to distribution to which the CHAPTER 7 TRUSTEE succeeds without any need to avoid the second extension agreement.

In his prayer for relief, the CHAPTER 7 TRUSTEE asks that the Court order SIMPSON "to liquidate the trust and to distribute its assets to the beneficiaries in accordance with the terms of the trust agreement," that she "be required to account to the Chapter 7 Trustee for any income attributable to the Debtor for all relevant periods," that she "be enjoined from making any distributions to the Debtor," that she turn over to the CHAPTER 7 TRUSTEE all documents and records related to the TRUST, and that she turn over all assets of the TRUST to which the DEBTOR may be entitled.

Pursuant to Section 542(a) of the Bankruptcy Code, SIMPSON has an obligation to "deliver to the trustee, and account for, such property or the value of such property." The CHAPTER 7 TRUSTEE should be permitted to review the TRUST'S books and records pertaining to distributions made to the DEBTOR. The CHAPTER 7 TRUSTEE is also entitled to make an independent determination of the nature and extent of the DEBTOR'S interest in the TRUST assets and should, therefore, be permitted to review the TRUST'S books and records for that purpose.

SIMPSON should make no further distributions to the DEBTOR as the CHAPTER 7 TRUSTEE now holds her interest and has held her interest since the bankruptcy filing date. To the extent that SIMPSON is holding any TRUST income to which the DEBTOR is entitled, she should immediately distribute that income to the CHAPTER 7 TRUSTEE.

To the extent that the TRUST corpus consists of cash, securities, or other liquid assets, the DEBTOR'S share of those assets should be distributed to the CHAPTER 7 TRUSTEE as soon as reasonably practicable. To the extent the TRUST corpus consists of interests in real estate of which the DEBTOR is entitled to a proportionate share, SIMPSON may, in the exercise of her discretion as Trustee, to the extent necessary to pay out, in full, the DEBTOR'S proportionate interest in the TRUST corpus, liquidate the real estate interests, or a portion thereof, and distribute the DEBTOR'S share of the proceeds to the CHAPTER 7 TRUSTEE. Alternatively, because the CHAPTER 7 TRUSTEE stands in the DEBTOR'S shoes as one of six beneficiaries, SIMPSON may, as allowed by the Declaration of Trust, convey title to the real estate to the CHAPTER 7 TRUSTEE and the other five beneficiaries as tenants in common or assign the beneficial interest in any land trust to the CHAPTER 7 TRUSTEE and the other five beneficiaries in proportionate shares. If so, the CHAPTER 7 TRUSTEE may move to sell such interest, to the other five beneficiaries, for example, or seek to exercise a right to partition.

For these reasons, the CHAPTER 7 TRUSTEE'S Motion for Summary Judgment will be granted and SIMPSON'S will be denied. This Opinion constitutes this Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate Order will be entered.

Dated: February 20, 2004.

THOMAS L. PERKINS
UNITED STATES BANKRUPTCY JUDGE

Copies to:
Charles E. Covey, Attorney for Debtor, 700 Commerce Bank Building, Peoria, Illinois 61602
Barry M. Barash, Attorney for Plaintiff, 256 S. Soangetaha Road, Suite 108, Galesburg, IL 61402
Joseph J. Solls, Attorney for Defendant, 331 Fulton, Suite 810, Peoria, IL 61602
Gerald W. Brady, Jr., Attorney for Defendant, 1133 N. North Street, Peoria, IL 61606
Richard E. Barber, Trustee, 318 Hill Arcade, 250 East Main Street, Galesburg, Illinois 61401
U.S. Trustee, 401 Main Street, Suite 1100, Peoria, IL 61602

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS

IN RE:	)	
	)	
DIANE R. HAWLEY,	)	**No. 02-83674**
Debtor.	)	
	)	
	)	
RICHARD E. BARBER, not personally, but as Chapter 7 Trustee for Diane R. Hawley,	)	
Plaintiff,	)	
	)	
vs.	)	**Adv. No. 03-8040**
	)	
CYNTHIA J. SIMPSON, not personally, but as Successor Trustee of the G. Raymond Becker Irrevocable Trust dated August 11, 1976,	)	
Defendant.	)	

ORDER

For the reasons stated in an Opinion filed this day, IT IS HEREBY ORDERED that:

1. The Motion for Summary Judgment filed by Cynthia J. Simpson, as Successor Trustee of the G. Raymond Becker Irrevocable Trust, is hereby DENIED;

2. The Motion for Summary Judgment filed by Richard E. Barber, as Chapter 7 Trustee, is hereby GRANTED;

3. Judgment is entered in favor of the Plaintiff and against the Defendant; and

4. Cynthia J. Simpson, as Successor Trustee, shall turn over and account for the interest of the DEBTOR in the Trust to Richard E. Barber, as Chapter 7 Trustee, in accordance with the Court's Opinion.

Dated: February 20, 2004.

THOMAS L. PERKINS
UNITED STATES BANKRUPTCY JUDGE

Copies to:
Charles E. Covey
Barry M. Barash
Joseph J. Solls
Gerald W. Brady, Jr.
Richard E. Barber
U.S. Trustee